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July 30, 1997

BY HAND DELIVERY

William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: Petition for Expedited Rulemaking of LCI International Telecom Corp. and Competitive Telecommunications Association to Establish Technical Standards for Operations Support Systems, RM 9101

Dear Mr. Caton:

Please find enclosed for filing an original and five copies of the Reply Comments of BellSouth Corporation in the above-captioned proceeding.

Please date-stamp and return the extra copy to the individual delivering this package.

Sincerely,

Kevin J. Cameron

Enclosures

No of Copies rec'd 0+4

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Petition for Expedited Rulemaking	)	
of LCI International Telecom Corp.	)	
and Competitive Telecommunications	)	RM-9101
Association to Establish Technical	)	
Standards for Operations Support	)	
Systems	)	
	)	

REPLY COMMENTS OF BELLSOUTH CORPORATION

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July 30, 1997

EXECUTIVE SUMMARY

In commenting on LCI's and CompTel's petitions for national standards governing access to operations support systems ("OSSs"), the competitive local exchange carriers ("CLECs") have revealed their true objectives: They seek not nondiscriminatory access to incumbent LECs' OSSs, but rather to have incumbent LECs develop expensive new, uniform systems that will minimize the CLECs' own costs of entering local markets. But this Commission has already concluded that the Telecommunications Act of 1996 imposes no such requirement. At most, it requires that incumbent LECs offer nondiscriminatory access to their existing OSSs, whereby CLECs may access OSS functions "in substantially the same time and manner" as the incumbent LEC itself.

The Eighth Circuit recently confirmed that CLECs have mandatory "unbundled access only to an incumbent LEC's existing network--not to a yet unbuilt superior one." Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al., 1997 U.S. App. LEXIS 18183, at *80. The Eighth Circuit's decision further demonstrates that national performance or technical standards would exceed the Commission's powers under the Act by impermissibly intruding on the States' authority to regulate local interconnection and network access. Absent a showing that the State commissions have failed to fulfill the role reserved to them under the Act, this Commission

has no legal authority to impose national technical or performance standards that go beyond the Act's requirement of nondiscriminatory access.

Nor would such standards be wise. National standards would short-circuit the development of more useful and suitable performance and technical standards through carrier-specific negotiations under the Act and industry-wide initiatives. More specifically, the national standards advanced by LCI and CompTel are ill-suited to serving the needs of all CLECs and would hamper, rather than promote, the efficient development of local competition.

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REPLY COMMENTS OF BELLSOUTH CORPORATION

The CLECs make little pretense about what they hope to gain from nationalization of OSS access. Calling the costs of connecting with incumbent LECs "artificial," the CLECs maintain that they "should not be forced to invest additional dollars above and beyond their extensive local infrastructure investment to interface with the diversified operating systems of numerous ILECs."[1] In other words, the CLECs want incumbent LECs to invest huge amounts of money in homogenizing their OSS systems to make it easier for CLECs to enter the market.

Establishing such a federal requirement would be irreconcilable with the 1996 Act's requirement that incumbents open their existing networks to competitors. See 47 U.S.C.

[1] Excel Comments at 13; see also GST Telecom Comments at 11; Telco Communications Group Comments at 11. Unless otherwise specified, all citations are to opening comments filed July 10, 1997, in Docket RM-9101.

§§ 251-252. The Commission itself has already recognized that OSS access need only be afforded to CLECs in "substantially the same time and manner" as the incumbent's own personnel receive it.[2] See BellSouth Comments at 14-21. An externally-imposed, uniform set of national standards that require incumbents to upgrade their existing systems is simply incompatible with the statute and with the Commission's rules.

The comments filed on LCI's and CompTel's Petition highlight not only the illegitimacy of the CLECs' position, but also its practical flaws. The CLECs fail to make a case that negotiation and collaborative standards-setting are inadequate to the task of ensuring nondiscriminatory access. Indeed, they acknowledge that the performance standards proposed by LCI and CompTel were not drawn up for this purpose and do not take account of the legitimate interests of incumbent LECs or even of many CLECs. Moreover, they appear to agree insofar as national technical standards are appropriate, industry standards-setting bodies are more appropriate drafters than this Commission.

The CLECs' desire to shift their costs to incumbent LECs simply cannot overcome these legal and practical hurdles. The

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[2] First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15764, ¶ 518 ("Report and Order"), modified on reconsideration, 11 FCC Rcd 13042 (1996), rev'd in part on other grounds, Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. July 18, 1997).

petition should be dismissed and the Commission should allow the existing negotiation and industry standards-setting processes to continue.

I. NATIONAL STANDARDS AND REPORTING REQUIREMENTS ARE BEYOND THE COMMISSION'S JURISDICTION

In the 1996 Act, Congress directed that local competition be implemented through negotiations between incumbent LECs and their competitors, under the supervision of the State commissions. See 47 U.S.C. §§ 251-252. This process allows the market participants to negotiate (or arbitrate) performance or technical standards for OSS access that fit their systems and business plans, back-stopped by State commission oversight.

Contrary to CLECs' claims, the Commission lacks authority to override this process. Even if substantive performance or technical standards were somehow integral to non-discriminatory access -- which they are not, as BellSouth explained in its initial Comments[3] -- the Commission still could not promulgate rules that interfere with the assigned powers of the States. As the Eighth Circuit has explained, "state commissions retain the primary authority to enforce the substantive terms of the agreements made pursuant to sections 251 and 252." See Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al., 1997 U.S. App. LEXIS 18183, at *48. The Commission may not circumvent this

[3]Comments of BellSouth Corporation at 14-20.

reservation of authority to the States by dictating standards to which incumbents and CLECs must conform when they negotiate their agreements at the state level. See Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *37 (FCC may not impose rules that "thwart the negotiation process"). Any such action by the Commission would effectively remove OSS access from the scope of negotiations and arbitrations and negate the States' oversight role. In particular, if the States could not adopt standards that fit their own markets in arbitration orders, they would be unable to perform a core function reserved to them by Congress. Id. at *4 (State commissions are to approve all final agreements).

The Commission, moreover, has no review or enforcement duties relating to negotiated or arbitrated agreements that would allow it to mandate technical or performance standards. The Act empowers the Commission to enforce substantive terms of agreements (such as performance or technical standards) in one limited instance -- where a State commission has failed to fulfill its duties under the Act. See 47 U.S.C. § 252(e)(5)-(6). Yet none of the comments filed in this proceeding allege that any State commission has failed to fulfill the role reserved to it under the Act. Since this predicate for Commission jurisdiction has not been satisfied, the Commission has no authority to review State commission determinations regarding agreements or to

enforce or dictate the terms of such agreements. See Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *48-50.

Transforming the Commission's nondiscrimination rule into a requirement that incumbent LECs upgrade their OSSs would violate section 251 in another way as well. The Eighth Circuit has made clear that the Act "does not mandate that requesting carriers receive superior quality access to network elements" as compared to what the incumbent itself receives. Id. at *79. CLECs have mandatory "unbundled access only to an incumbent LEC's existing network--not to a yet unbuilt superior one." Id. at *80. If, therefore, the incumbent chooses to negotiate to provide the CLEC higher-quality facilities, it is the CLEC, not the incumbent, that must bear the cost. Id.

At least one CLEC concedes that "rigid, numeric measurements would be contrary to the plain statutory language" of section 251. Teleport Communications Group Comments at 3. Yet, searching for something in the Communications Act that might support OSS performance standards, other commenters cite 47 U.S.C. § 201(b) and § 202(a). See, e.g., Excel Comments at 4; Telco Communications Group Comments at 4. These provisions require that charges and practices relating to common carriers' provision of communications services must be just, reasonable, and nondiscriminatory. Even if they were applicable to OSS access and not superceded by express assignments of jurisdiction

to the States under sections 251 and 252,[4] these provisions would only authorize the Commission to require nondiscriminatory access to OSSs — which is what the Commission already requires under section 251. Just like section 251, they provide no authority for the Commission to issue specific, nationwide performance standards.

Nor is there any statutory authority for requiring all incumbent LECs to report their performance in the same way. There are a variety of measurements that would allow CLECs to verify that they are receiving access in "substantially the same time and manner" as the incumbent LEC, and section 251 provides no basis for requiring use of one, rather than another. National performance measures also could not be ordered under 47 U.S.C. § 154(i). See, e.g., KMC/RCN Telecom Comments at 5-6. That section "merely suppl[ies] the FCC with ancillary authority to issue regulations that may be necessary to fulfill its primary directives contained elsewhere in the statute."[5] As explained

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[4] The Eighth Circuit has expressly rejected arguments that sections 201 and 202 give the Commission jurisdiction over the intrastate matters covered in sections 251 and 252. Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *24 n.18.

[5] Iowa Utils. Bd., 1997 U.S.App. LEXIS 18183, at *15; accord Mobile Communications Corp. v. FCC, 77 F.3d 1399, 1406 (D.C. Cir. 1996) (Section 154(i) authorizes condition that is necessary to ensure achievement of FCC's statutory responsibility). The authority granted to the Commission under section 303(r), another provision invoked by CLECs (see KMC Telcom Comments at 4) is no broader. Iowa Utils. Bd. at *15.

above, however, the State commissions -- not the FCC --are to play the primary role in guaranteeing that incumbent LECs abide by the requirements of sections 251 and 252, by arbitrating and enforcing negotiated agreements. Absent abdication by each and every State commission of this responsibility (and no commenter has made any such allegation) the FCC has no authority to intervene in or override this process by dictating national performance measures.

In any event, BellSouth's negotiation of performance reporting requirements with AT&T shows that negotiation toward mutually satisfactory standards works in practice and that Commission intervention is unnecessary. See BellSouth Comments at 16-18. The BellSouth/AT&T interconnection agreement provide those measures CLECs seek through a Commission rulemaking. For instance, BellSouth has committed to provide monthly reports on service performance.[6] BellSouth also will provide performance data on items such as installation intervals and outages.[7] BellSouth will "report on its performance for itself and for CLECs as a group," as AT&T has requested. Under that agreement, therefore, BellSouth will give AT&T the information it needs to verify BellSouth's compliance with the "nondiscriminatory access"

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[6] See Corrected LCI Comments at 8 (filed July 16, 1997) (incumbent LECs should be required to provide monthly reports on OSS access); AT&T Comments at 23 (same).

[7] See WorldCom Comments at 8 (asking for same).

requirement. BellSouth stands ready to offer the same performance reports to other CLECs or to negotiate individualized measurements and reports to meet CLECs' particular needs.

Finally, CLEC commenters suggest that the Commission has the authority to make compliance with national performance and technical standards and reporting requirements for OSS access a precondition of receiving in-region interLATA relief under section 271.[8] Further delaying the benefits of long distance competition would not, under any scenario, be a proper way of advancing the CLECs' agenda for local markets. More importantly, as a statutory matter, this suggestion flies in the face of the express language of section 271. The BOCs must satisfy the "competitive checklist" contained in section 271(c)(2)(B) in order to receive in-region, interLATA relief. The checklist requires only that the BOCs provide "[n]ondiscriminatory access to network elements," § 271(c)(2)(B)(ii), and forbids the Commission from expanding this requirement, § 271(d)(4). Therefore, even if OSSs are network elements, see Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *62-69, the Commission may not require anything more than nondiscriminatory access as a

[8] E.g., AT&T Comments at v, 39; Excel Comments at 6; Telco Communications Group Comments at 5; GST Telecom Comments at 6; see also CompTel Comments at 6 (proposing that where an incumbent LEC has failed to meet CompTel's proposed national standards, it should be prohibited from taking orders for interexchange service).

condition of long distance entry. It could not require the BOCs to meet specific performance or technical standards or national reporting requirements.

Nor may the Commission direct that a petitioning BOC meet such standards or reporting requirements in order to satisfy section 271's public interest requirement. See 47 U.S.C. § 271(d)(3)(C). As the Supreme Court has made clear, "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare," and must be construed in light of the legislation as a whole. NAACP v. FPC, 425 U.S. 662, 669 (1976). Since the Act requires only that the BOCs offer nondiscriminatory access to OSSs, and section 271(d)(4) forbids expanding this requirement "by rule or otherwise," the Commission may not make more stringent requirements a precondition to satisfying the Act's public interest requirement.

What has been said about the proposals of LCI and CompTel applies to the peripheral requests of other CLECs with at least equal force. CLEC commenters have seized the opportunity to add to petitioners' proposed performance standards and measures a number of other proposed requirements ranging from disclosure of confidential documents, Excel Comments at 10, to auditing requirements, AT&T Comments at 28. These requests necessarily should be rejected because they are mere incidents of the

unlawful rules suggested by LCI and CompTel. As explained above, the Commission has no authority to impose such requirements. And even if the Commission had such authority, peripheral requests such as auditing requirements could not be justified as necessary or even appropriate to enforce nondiscrimination requirements. Congress determined that such duties should not be imposed on incumbent LECs under section 251, although it found them appropriate in other contexts. See, e.g., 47 U.S.C. §§ 272(d), 273(c), 274(b).

II. THE SPECIFIC PERFORMANCE STANDARDS PROPOSED BY LCI AND COMPTEL ARE UNWORKABLE AND UNNECESSARY

Even if national performance standards were permissible, they would be not desirable. In the first instance, the national standards advanced by LCI and CompTel are ill-suited to serving the needs even of all CLECs. More fundamentally, no commenter has advanced a convincing argument for why federal performance standards are needed in the first place.

A. The Specific Standards Proposed by LCI and CompTel Are Unworkable

The particular national rules suggested by LCI and CompTel are unworkable and unfair. Sprint, one of the members of the forum that drafted the standards proposed by LCI, explains that these "benchmark values" were never intended by their drafters to be "a hard-and-fast rule or a performance standard applicable to all LECs." Sprint Comments at 8. Likewise, Teleport

Communications Group ("TCG"), which describes itself as "the largest facilities-based competitive local exchange carrier," TCG Comments at 1, explains that "facilities-based CLECs face different, and perhaps more complex, issues than presented by Petitioners in ensuring that the performance parity mandate is fulfilled." Id. at 7. TCG notes that parity is a "simple concept," but not one susceptible to "[r]igid measurement requirements, like those recommended by Petitioners." Id. at 3-4.

Even more troubling is the one-sided process used to develop the rules proposed by LCI and CompTel. According to AT&T, CLECs proposed possible standards, which were then reviewed by other CLECs based on the extent to which each standard would assist the CLEC in question. After this review, the winning standards were narrowed by a panel of CLEC representatives. AT&T Comments at 14. Plainly, that is not the sort of impartial, industry-wide review that produces standards reflecting the legitimate concerns of all interested parties. Indeed, this inbred process makes it almost comical for LCI to maintain that the Commission should adopt LCI's wholly one-sided proposals in order to prevent incumbent LECs from "impos[ing] standards on users through industry fora" where all sides -- including CLECs, end users, and manufacturers -- are represented. Corrected LCI Comments, App. A, at 13.

Not surprisingly, the CLEC-developed standards are fundamentally unsuited to the task of enforcing the Act's actual requirements on an industry-wide basis. For instance, they establish measurements that reflect not the performance of the incumbent LEC, but rather the joint performance of the incumbent and the CLEC, which is in part beyond the incumbent's control. See Bell Atlantic/NYNEX Comments at 7.

Many of the proposed performance measurements are unworkable. For example, in the section entitled "Network Performance Parity," LCI proposes (Corrected LCI Comments, Appendix B at 11) specific transmission quality measurements (subscriber loop loss, signal-to-noise ratio, idle channel circuit noise, loops-circuit balance, circuit notched noise, and attenuation distortion) for which mechanized testing is not available. (Moreover, what manual testing is available can only be performed by taking the circuit being tested out of service.)

Moreover, where the CLECs propose absolute performance standards rather than measurements to assure nondiscrimination, their standards often are unrealistic. For example, LCI proposes that incumbent LECs restore out-of-service customer reports within 3 hours if no dispatch is required and within 8 hours if a dispatch is necessary, 95 percent of the time. Corrected LCI Comments, App. B at 5. Apparently, LCI did not have any concern for the reasonableness of this objective, which is far more

stringent than incumbent LECs have been able to achieve for their retail customers. For example, BellSouth's Annual Service Quality Report (FCC Report 43-05) for the period January 1996 to December 1996 shows average restoration intervals from the time of the initial customer trouble reports of 17.4 hours for residential customers and 16.8 hours for business customers. These intervals compare favorably with the historical experience of other incumbents.

B. There Has Been No Showing of Need for National Standards

For the most part, commenters that support performance standards simply rely on, or restate, the allegations of failures by incumbent LECs made in the LCI/CompTel Petition. See, e.g., Excel Comments at 8 (citing supposedly "overwhelming compilation of evidence" in LCI/CompTel Petition). But as explained by BellSouth and others, the Petition misrepresents the status and availability of OSS interfaces and relies upon testimony in state proceedings that is outdated or flatly wrong. See BellSouth Comments at 4-14; Bell Atlantic/NYNEX Comments at 7-9.

The handful of new allegations leveled by CLECs are no more persuasive. American Communications Services, Inc. ("ACSI"), for example, raises issues concerning BellSouth's provision of unbundled loops in Georgia. See ACSI Comments at 5. In January,

1997, ACSI filed a formal complaint on this issue with the Commission, alleging that BellSouth failed to meet performance criteria set out in an existing interconnection agreement. Id. But that very allegation proves that negotiations between incumbents and CLECs can effectively address performance standards and undercuts any claim of a need for this Commission to force national standards on the parties.[9] Moreover, if ACSI is dissatisfied with the terms of its existing agreement, BellSouth will provide ACSI with the performance measuring requirements contained in the BellSouth/AT&T agreement or negotiate ACSI-specific measures.

KMC cites "experiences with BellSouth" as "illustrative of the problems KMC has faced elsewhere." KMC/RCN Telecom Comments at 2-3. The supporting Declaration of Paula Linn, however, merely offers vague suggestions that BellSouth has failed to meet some unspecified obligation. For example, Ms. Linn complains that BellSouth's current resale ordering procedure requires KMC to complete and fax a "multi-page hand written document" and that there is "no standard interface with whom we follow up the actual

[9]BellSouth has demonstrated to this Commission that ACSI's own failures contributed significantly to the problems of which it complained. Moreover, since ACSI's complaint was filed, BellSouth has successfully provisioned several hundred unbundled loops in compliance with the performance criteria contained in the BellSouth/ACSI agreement.

dispatch and installation of our service orders." Linn Decl. ¶¶ 3-4. KMC apparently has chosen not to take advantage of BellSouth's electronic interfaces, which eliminate the need to send orders for simple services by facsimile and provide order status. Moreover, to the extent KMC is placing orders for the resale of complex services, the manual ordering processes it uses are like those used by BellSouth's own retail sales representatives. Electronic processing of the sort used for simple services is not possible because -- by their very nature -- orders for complex services require interaction between BellSouth and the CLEC, including the provision of substantial amounts of detailed information by the CLEC.

KMC's specific complaints about processing of orders for Prysm Technologies and Willis Knighton Medical Center are misleading at best. These were complex orders involving many hundreds of lines. In some cases, the orders contained incomplete or incorrect information that required BellSouth to obtain clarification from KMC. On one order, KMC requested installation of service on a date prior to KMC's receipt of authority to operate in Louisiana and prior to the establishment of a master billing account with BellSouth. Finally, BellSouth's records show that these orders were first submitted in mid-April and late April, not in "late March and early April," as asserted by Ms. Linn.

There was a billing error, as Ms. Linn asserts, but the error has been corrected. Moreover, Ms. Linn's observation that manual intervention is required to correct billing errors does not indicate any discrimination against KMC or CLECs generally: BellSouth uses the same billing systems to bill CLECs as it uses to bill its retail customers.

WinStar's complaint about "rated" and "unrated" billing data is nothing more than an attempt by WinStar to shift costs of billing its own customers onto incumbent LECs. Winstar Comments at 7. BellSouth will, at the CLEC's option, provide daily usage data to CLECs on either a "rated" basis (i.e., rated at BellSouth's rates) or an "unrated" basis (i.e., without the application of any rate). (In its monthly billing to CLEC resellers, BellSouth of course rates all usage at BellSouth's resale discount rates.) In either case, BellSouth provides in electronic form sufficient information for CLECs to segregate and rate calls at whatever rate they deem appropriate. WinStar has not given any reason why the cost of segregating call detail for the application of the CLEC's own rates should be borne by incumbent LECs, rather than the CLECs, whose responsibility it is to bill their customers.

As for WinStar's complaint about processing of CARE transactions, the facts alleged by WinStar do not correctly describe BellSouth's practice. BellSouth handles CARE

transactions in accordance with an industry guideline adopted by the Ordering and Billing Forum. If interexchange carriers are billing WinStar directly for WinStar's customers' calls, such billing is not due to BellSouth's handling of the CARE transactions, but is a matter for resolution between WinStar and the interexchange carriers. WinStar must accept the responsibilities of being a LEC, such as negotiating its relationships with the interexchange carriers used by WinStar customers.

III. FEDERAL TECHNICAL STANDARDS ARE BOTH INAPPROPRIATE AND UNNECESSARY

While support for federal performance standards depends upon the commenter's past investments in OSS access, virtually every commenter, regardless of market position, has opposed promulgation of federal technical standards. MCI, Sprint, and WorldCom, for instance, agree with BellSouth and other incumbent LECs that technical standards are best worked out in the OBF and other industry fora. MCI Comments at 12-14; Sprint Comments at 2-3; WorldCom Comments at 14. The OBF is making steady progress toward establishing technical standards for OSS functions, as the Independent Telephone & Telecommunications Alliance ("ITTA") explains. ITTA Comments at 6 (industry has reached "final closure" on ordering, billing, and LEC-to-LEC billing and have implemented other standards on an interim basis). By contrast,

MCI observes that for this Commission even to attempt to formulate technical standards would be "extremely time-consuming and resource intensive," and that allowing industry processes to run their course will at a bare minimum narrow the range of issues facing the Commission in the future. MCI at 14-15. LCI itself acknowledges that "technical standards will need to allow for the differing needs of competitive carriers" and that industry-wide user groups should develop them "on an iterative basis." Corrected LCI Comments, App. A at 13.

Nor should the Commission impose a due date on the industry efforts. See Corrected LCI Comments at 7, Sprint Comments at 3; WorldCom Comments at 15. Artificial deadlines would hamper the industry groups' efforts to address the needs of all industry participants in an appropriate sequence and to secure the contributions of all parties. The Commission should leave issues of timing -- along with specific standards -- to the industry participants themselves.[10]

CONCLUSION

Comments on the Petition of LCI and CompTel confirm BellSouth's position that a federal rulemaking would be unlawful

[10] Similarly, the Commission should not require the incumbent LECs to roll-out newly adopted standards by a specific date. See, e.g., WorldCom Comments at 15. Commitments of this type can be obtained through the negotiated agreement/arbitration process; BellSouth, for instance, already has committed to deploying industry standards within seven months after they are released.

under the 1996 Act, unwise, and unnecessary. Rather than exceeding its jurisdiction in an effort to advance the agenda of selected CLECs, the Commission should carry out the duties Congress did assign it, and let the States do the same. The result, as BellSouth's experience confirms, will be an opening of local markets through negotiation, consistent with Congress's deregulatory goals.

Respectfully submitted,

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Counsel for BellSouth Corporation

July 30, 1997

CERTIFICATE OF SERVICE

I, Holly R. Schroeder, hereby certify that on this 30th day of July, 1997, I caused copies of the foregoing Reply Comments of BellSouth Corporation to be served on the parties listed below by United States first-class mail, postage prepaid.

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